

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 12/10/2013	(3) CONTACT/PHONE John Diodati, Department Administrator (805) 788-2832	
(4) SUBJECT Submittal of a resolution authorizing and directing the actions necessary to satisfy the conditions to effectiveness of the amended bankruptcy in <i>In re the Los Osos Community Services District</i> . District 2.			
(5) RECOMMENDED ACTION It is our recommendation that your Honorable Board approve the attached resolution authorizing and directing: <ol style="list-style-type: none"> 1. The Chairman of the Board to execute the Assignment of the Solid Waste Collection Franchise Agreement between the County, the Los Osos Community Services District (LOCSD), Waste Connections, Inc. and Mission Country Disposal; and 2. The Auditor-Controller-Treasurer-Tax Collector (ACTT) to remit \$2,800,000 from the County General Fund to the LOCSD for distribution among the LOCSD creditors; and 3. The ACTT to remit \$772,029 from the Los Osos Wastewater Project Fund to the LOCSD for distribution among the LOCSD creditors. 			
(6) FUNDING SOURCE(S) General Fund / LOWWP	(7) CURRENT YEAR FINANCIAL IMPACT \$3,572,029.00	(8) ANNUAL FINANCIAL IMPACT \$159,000.00 Revenue	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) District 2 -			

Reference: 13DEC10-C-6

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

John Diodati, Department Administrator

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 12/10/2013

SUBJECT: Submittal of a resolution authorizing and directing the actions necessary to satisfy the conditions to effectiveness of the amended bankruptcy in *In re the Los Osos Community Services District*. District 2.

RECOMMENDATION

It is our recommendation that your Honorable Board approve the attached resolution authorizing and directing:

1. The Chairman of the Board to execute the Assignment of the Solid Waste Collection Franchise Agreement between the County, the Los Osos Community Services District (LOCSD), Waste Connections, Inc. and Mission Country Disposal; and
2. The Auditor-Controller-Treasurer-Tax Collector (ACTTC) to remit \$2,800,000 from the County Tax Reduction Reserve Fund to the LOCSD for distribution among the LOCSD creditors; and
3. The ACTTC to remit \$772,029 from the Los Osos Wastewater Project Fund to the LOCSD for distribution among the LOCSD creditors.

DISCUSSION

The recommended actions are the final actions needed by your Board to conclude the County's coordination and assistance in resolving the bankruptcy proceedings of the Los Osos Community Services District.

On August 25, 2006, the LOCSD filed for Chapter 9 bankruptcy in *In re Los Osos Community Services District*, Case No. ND 06-10548 (LOCSD Bankruptcy). Over the past seven years, these and prior recommendations have been developed to assist in resolving the LOCSD Bankruptcy while also ensuring that county-wide taxpayers do not inherit a financial burden as a result of the LOCSD Bankruptcy. In drawing a conclusion to the efforts, those two objectives have been accomplished.

In 2010, the LOCSD filed its Plan for Adjustment of Debts for the Los Osos Community Services District, dated October 22, 2010 (Plan). The Plan identified four classes of creditor claims impaired under the Plan, including the claim of MBIA Insurance Corp. (Class 5(b)), the claim of the Regional

Water Quality Control Board (Class 6), the claim of the State Water Resources Control Board (SWRCB) (Class 7) and all other general unsecured claims (Class 8). Pursuant to the Plan, the Class 8 creditors were to receive a pro rata share of any cash distribution from the available funds identified as follows:

- (1) The remaining proceeds from the loan that the LOCSD obtained from the SWRCB's SRF to design and construct the LOCSD wastewater project (SRF Funds); and
- (2) The \$2,800,000 in proceeds from the transfer of LOCSD's solid waste franchise contract to the County.

The United States Bankruptcy Court for the Central District of California, Northern Division (Bankruptcy Court) approved the Plan in an order entered on August 8, 2011 (Plan Confirmation Order).

Monterey Mechanical Co. (Monterey) appealed the Plan Confirmation Order to the United States District Court for the Central District of California and to the Ninth Circuit Court of Appeals. Monterey acquired its claim from Barnard Construction Co. (Barnard). Barnard performed work on the LOCSD wastewater project, including the installation of pipes, without allegedly receiving full compensation. Monterey is a Class 8 creditor under the Plan.

Monterey appealed the Plan Confirmation Order to the United States District Court for the Central District of California (District Court). Monterey claimed, among other things, that the transfer of the Broderon Property and the Mid-Town Property to the County constituted fraudulent transfers under California law. The District Court affirmed the Plan Confirmation Order. Monterey then appealed the Plan Confirmation Order to the Ninth Circuit Court of Appeals (Ninth Circuit).

As required by the Ninth Circuit, the LOCSD, County, Monterey and National Public Finance Guarantee Corporation and MBIA Insurance Corp. participated in a court-ordered mediation. As a result of the mediation, the parties agreed to and executed a Settlement Agreement and Mutual Release on May 14, 2013 (Settlement Agreement). The Settlement Agreement provides that the Class 8 creditors are to receive a pro rata share of an additional payment of \$800,000. In consideration for the pipes installed by Barnard, the County is to contribute \$772,029 from funds allocated to its wastewater project to this additional payment. The balance will be remitted by the LOCSD.

On July 19, 2013, LOCSD filed its Second Amended Plan for Adjustment of Debts for the Los Osos Community Services District dated October 22, 2010, as further Amended by Non-Material Modifications consistent with the terms of the Settlement Agreement (Amended Plan). The Bankruptcy Court approved the Amended Plan in an order entered on October 15, 2013.

Assignment of Solid Waste Collection Franchise Agreement

On or about September 4, 2008, the LOCSD and Waste Connections, Inc. and Mission Country Disposal (collectively, Mission Country) entered into an amended and restated Solid Waste Collection Franchise Agreement (Franchise Agreement) pursuant to which Mission Country provides waste collection services within the LOCSD boundaries. The Franchise Agreement automatically terminates on August 31, 2023, subject to the LOCSD's option to extend the Franchise Agreement for up to thirty-six months.

The terms of the Franchise Agreement do not vary significantly from County franchise agreements. However, the Assignment of Franchise Agreement (Assignment Agreement) conditions the assignment on a number of amendments to the Franchise Agreement, including amendments modifying terms no longer appropriate based on the removal of LOCSD as a party and amendments rendering the Franchise Agreement consistent with the County Code. By way of example, Section 5.10 of the Franchise Agreement is amended to provide that the LOCSD will be charged for waste collection service at LOCSD facilities in accordance with existing rates.

Pursuant to the Assignment Agreement, the service rates are those in effect as of the effective date of the assignment or those rates subsequently approved by the Board of Supervisors for the services performed or rendered under the assigned Franchise Agreement. As Section 8.12.310 of the County Code makes solid waste disposal services mandatory for all places and premises located within the urban reserve lines of the Baywood/Los Osos area, the County will need to comply with the requirements of Proposition 218 before revising the collection rates.

Mission Country has been providing waste collection services in other unincorporated areas of the north coast under contract with the County since 1998.

In order for the Amended Plan to become effective, your Board must approve the assignment of the Franchise Agreement and authorize the ACTTC to remit \$2,800,000 to the District in consideration for the assignment. Said funds will be distributed to the LOCSD creditors in accordance with the Amended Plan.

Additional Payment

Prior to executing the Settlement Agreement, the County tested the pipes installed by Barnard and determined that they could be used in the County's wastewater project. Barnard had installed 3,641 linear feet of pipeline. Of that amount 1,930 linear feet passed inspection. However, of the pipe that did not pass the testing, it will only require some remedial work to make this pipe usable. The end result is that virtually all of the pipe will be used for the project.

In order for the Amended Plan to become effective, the County must remit \$772,029 to the LOCSD for distribution among the LOCSD creditors in accordance with the Amended Plan. This amount was determined to be the value of pipes installed by Barnard and which will be utilized in the County project. As a result, since it reflects the value of the Barnard's work that will benefit the County project, it resolves the relationship between the LOCSD Project, the County Project and the LOCSD Bankruptcy.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel has reviewed the LOCSD bankruptcy documents and the Assignment of the Franchise Agreement as to legal form and effect.

FINANCIAL CONSIDERATIONS

A payment of \$772,029 will be made from the Los Osos Wastewater Project fund for the value of these pipes and this amount is currently budgeted in the Los Osos Wastewater Project.

An upfront payment of \$2,800,000 to the LOCSD for distribution to the LOCSD creditors will be made by the County and this amount is currently budgeted in the Tax Reduction Reserve Fund. This

amount was appropriated during the 2011-12 budget process. The franchise fee paid by Mission Country to LOCSD in accordance with Section 19.1 of the Franchise Agreement is presently approximately \$159,000 per year, and this amount will now be paid to the County with the assignment of the Franchise Agreement.

RESULTS

Authorizing and directing the actions set forth in the attached resolution will enable the County to perform those actions necessary for the Amended Plan to become effective.

File: WBS 300448.04.02

Reference: 13DEC10-C-6

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ATTACHMENTS

1. Resolution Authorizing and Directing the Actions Necessary to Satisfy the Conditions to Effectiveness of the Amended Bankruptcy Plan in In re Los Osos Community Services District